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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. WILLIAM HUNTSINGER, Defendant and Appellant.	E070886 (Super.Ct.No. SWF1800211) OPINION

APPEAL from the Superior Court of Riverside County. John M. Davis, Judge. Affirmed.

John Derrick, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal, Collette C. Cavalier and James M. Toohey, Deputy Attorneys General, for Plaintiff and Respondent.

I.

INTRODUCTION

Robert Beal parked and locked his truck in a public parking lot and went out for the evening. When he returned, he found defendant and appellant, William Michael Huntsinger, inside of the truck. A fight ensued between Beal and defendant during which Beal inflicted injuries on defendant's face. After Beal and defendant fought for about 15 to 20 minutes, law enforcement arrived, defendant was sent to the hospital for his injuries, and thereafter arrested for breaking into Beal's truck.

A jury found defendant guilty of one count of attempted unlawful taking or driving of a vehicle (Veh. Code, § 10851, subd. (a); count 1), and one count of automobile burglary (Pen. Code, § 459; count 2).

On appeal, defendant asserts the trial court prejudicially erred in four ways. First, defendant contends the trial court failed to instruct the jury on vehicle tampering, a lesser included offense to vehicular burglary. Second, defendant contends the trial court erroneously excluded two photographs of the right side of his face that showed the injuries Beal inflicted on him after Beal found him inside Beal's truck. Third, defendant contends the trial court improperly admitted evidence of two instances in which he was found driving a stolen car. Finally, Defendant asserts the trial court's errors independently and cumulatively warrant reversal. We reject defendant's contentions and affirm the judgment.

II.

FACTS AND PROCEDURAL BACKGROUND

A. *Facts*

Beal and Riverside County Sheriff's Deputy Cory Allen provided the following undisputed account of the events underlying defendant's offenses.[1]

Beal was staying at a Best Western in Lake Elsinore. On the night of defendant's offenses, Beal had gone out with his girlfriend, Holly Yglesias. Beal drove Yglesias's car for the evening and left his truck parked at the Best Western's parking lot. Beal specifically recalled that he had made sure to lock his truck's doors because someone had stolen about $600 worth of tools from the truck two days before.

When Beal and Yglesias returned around midnight, Beal noticed that his truck's headlights were on. After he and Yglesias parked her car, Beal approached his truck and saw defendant sitting in the driver's seat, hunched over the steering wheel. Beal saw defendant's left hand on the steering wheel, but could not see his right hand. Beal tapped on the driver's window and said to defendant, "'You're pretty f---ing stupid. Wrong truck.'"

Defendant looked "shocked" and locked the door. Beal was "amped" and "very" upset, and told defendant "to open the door and take this beating [you have] coming." Beal was "yelling and screaming and telling [defendant] to open the door." Beal

[1] Defendant did not testify, and the only witnesses he called were Beal and the mother of his child, who did not have any knowledge of the underlying events. Beal and Deputy Allen's testimony about the incident therefore was uncontroverted.

headbutted and punched the window, and told defendant, "[y]ou might as well unlock" the door because "I'll break the window to get to you."

After a few minutes, defendant unlocked the door. Beal pulled the door open and defendant lunged at him with a screwdriver. Beal, who has Thai boxing experience, grabbed defendant by the throat and began to punch him repeatedly. Beal told Yglesias to call the police because he was "gonna kill this guy." Beal and defendant engaged in a physical altercation for about 15 to 20 minutes before law enforcement arrived, during which Beal held defendant, punched him, and asked him why he was trying to take Beal's truck.

Deputy Allen responded to the dispatch call. Upon Deputy Allen's arrival, he spoke with Beal and Yglesias, and their conversation was recorded on his bodycam. Beal was "very agitated" and cursing. Beal told Deputy Allen what had happened and admitted to injuring defendant's face. Beal told Deputy Allen that he saw defendant in his car and told him, "you f---ed up b----!" Beal went on: "I go get out of the f---in' truck . . . he's lucky he didn't come out." "I wanted to just snap every bone in his body . . . ." "[H]e got caught right here and I f---in' grabbed him by his neck."

Beal asked Deputy Allen for five or 10 more minutes "with defendant," which Deputy Allen did not allow. Deputy Allen told Beal that defendant had to go to the hospital because of his injuries. Defendant was transported to the hospital and subsequently arrested for breaking into Beal's truck.

III.

THE TRIAL COURT WAS NOT REQUIRED TO SUA SPONTE INSTRUCT THE JURY ON THE LESSER INCLUDED OFFENSE OF VEHICLE TAMPERING

Defendant contends the trial court erred by not sua sponte instructing the jury on the lesser included offense of vehicle tampering on defendant's burglary charge. We disagree.

1. *Applicable Law*

Trial courts have a "'sua sponte duty to "instruct on a lesser offense necessarily included in the charged offense if there is substantial evidence the defendant is guilty only of the lesser." [Citation.] Substantial evidence in this context is evidence from which a reasonable jury could conclude that the defendant committed the lesser, *but not the greater*, offense.'" (*People v. Landry* (2016) 2 Cal.5th 52, 96, original italics.) Thus, trial courts must provide "'instructions on lesser included offenses when the evidence raises a question as to whether all of the elements of the charged offense were present [citation], but not when there is no evidence that the offense was less than that charged.'" (*People v. Breverman* (1998) 19 Cal.4th 142, 154.)

But "error in failing sua sponte to instruct . . . on all lesser included offenses . . . must be reviewed for prejudice." (*People v. Breverman*, *supra*, 19 Cal.4th at p. 178.) A conviction may be reversed only if it is "'reasonably probable' the defendant would have obtained a more favorable outcome had the error not occurred." (*Ibid.*) This assessment

"focuses not on what a reasonable jury *could* do, but what such a jury is *likely* to have done in the absence of error." (*Id.* at p. 177, original italics.)

Vehicle tampering (Veh. Code, § 10852) is a lesser included offense of vehicle burglary because "one cannot burgle a vehicle without tampering with it." (*People v. Mooney* (1983) 145 Cal.App.3d 502, 505.) Relevant here, a defendant commits tampering by stealing from an unlocked vehicle, but commits burglary by stealing from a locked vehicle. (*Ibid.*) Accordingly, if there is "no evidence to raise a reasonable doubt whether [a vehicle] was locked . . . the court need not instruct on [tampering] where substantial evidence would support only a verdict of guilt on [burglary]." (*Id.* at p. 506.)

A. *Analysis*

Here, the trial court did not err by failing to sua sponte give a tampering instruction because substantial evidence supported defendant's burglary conviction since Beal's truck was locked. Beal testified that he locked his truck after he parked it. Beal further testified that he specifically recalled checking to make sure that he had locked the truck's doors because someone had stolen tools out of the truck two days before. Beal's testimony was uncontradicted. Defendant did not testify or provide any evidence that conflicted with Beal's testimony he locked his truck, so there was no evidence that Beal's truck was unlocked when defendant entered it. Because there was no doubt, much less a reasonable doubt, that Beal's truck was locked, the trial court was not required to give the jury a vehicle tampering instruction. (*People v. Mooney*, *supra*, 145 Cal.App.3d at p. 505.)

Even if the evidence justified such an instruction, the error, if any, was harmless. Failure to instruct on a lesser included offense does not require reversal if it can be determined that the factual question posed by the omitted instruction necessarily was resolved adversely to the defendant under other properly given instructions. (*People v. Bradford* (1997) 14 Cal.4th 1005, 1056.) By finding defendant guilty of vehicular burglary, the jury found defendant intended to commit theft by breaking into Beal's locked vehicle with the intent to steal either his possessions or the truck itself. (See CALCRIM No. 1700.) In making that determination, the jury necessarily found that defendant did not intend to tamper with Beal's truck. Therefore, it is not reasonably probable the jury would have returned a guilty verdict on vehicle tampering, but not vehicle burglary, if the jury had been instructed on vehicle tampering. It follows that the trial court's omitting a vehicle tampering instruction was harmless. (*Id.*; *People v. Breverman, supra,* 19 Cal.4th at p. 177.)

IV.

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY EXCLUDING TWO PHOTOGRAPHS OF THE RIGHT SIDE OF DEFENDANT'S INJURED FACE

Defendant sought to introduce three photographs of his face taken shortly after Deputy Allen arrived at the crime scene to show "the full extent of [his] facial injuries." Defendant claimed the photographs were admissible to impeach the credibility of Beal and Deputy Allen. Defendant argued his injuries provided "Beal had an incentive to bring the screwdriver into the narrative" and claim self-defense. Defendant also argued

that the photographs would show that, given the seriousness of his injuries, Deputy Allen acted unprofessionally and failed to investigate properly, which showed his bias against defendant.

The trial court allowed one photograph of the left side of defendant's face, but excluded two photographs of the right side of his face because they were "very graphic," "really very bloody," and defendant "look[ed] . . . dead" in one of them. The trial court thus found them more prejudicial than probative under Evidence Code section 352 because, in the court's view, how Deputy Allen investigated and whether defendant "got really beat up" was not relevant. The trial court further found that defendant could adequately challenge Beal and Deputy Allen's credibility by cross-examining them. We find no error in excluding the two photographs of the right side of defendant's face for the reasons stated below.

A. *Applicable Law*

In determining whether the trial court erred in excluding the two photographs of the right side of defendant's face, this court must determine whether the trial court abused its discretion in finding the photographs more prejudicial than probative. "Under Evidence Code section 352, the probative value of the proffered evidence must not be substantially outweighed by the probability that its admission would create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (*People v. Cole* (2004) 33 Cal.4th 1158, 1195.) Because the decision to admit or exclude evidence under Evidence Code section 352 is committed to the trial court's discretion, we will not

disturb a trial court's exercise of that discretion "'"except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice."'" (*Uspenskaya v. Meline* (2015) 241 Cal.App.4th 996, 1000-1001.)

We conclude the trial court did not abuse its discretion in excluding the two photographs of the right side of defendant's face on the ground they were more prejudicial than probative. On appeal, defendant does not dispute that the trial court's conclusion that the extent of his injuries was not relevant to the core issues, namely, his intent and whether Beal's truck was locked. Nor does defendant dispute that the trial court also properly found that the "very graphic" and "very bloody" nature of the photographs was prejudicial. Instead, defendant maintains that the two photographs were admissible only to impeach the credibility of Beal and Deputy Allen.

The trial court admitted one photograph of the left side of defendant's face and declined to admit the two photographs of the right side of his face. But, as the trial court ruled, the two additional photographs were unnecessary for impeachment purposes because defendant was free to cross-examine Beal regarding injuring defendant. Similarly, defendant could cross-examine Deputy Allen regarding defendant's injuries, how Deputy Allen responded to the situation, and whether his actions were appropriate and professional. The trial court reasonably concluded the defense could sufficiently probe the credibility of Beal and Deputy Allen without the photographs. The trial court therefore did not abuse its discretion in excluding the two photographs of the right side of

defendant's face. (See *People v. Mullens* (2004) 119 Cal.App.4th 648, 658 [trial court abuses its discretion only when its decision "'exceeds the bounds of reason'"].)

Even if the trial court erred by excluding the two additional photographs, any such error was harmless because there was overwhelming evidence supporting defendant's convictions for vehicular burglary and attempted unlawful taking or driving of a vehicle. "[R]eversal is required only if it is reasonably probable the defendant would have obtained a more favorable result had the evidence been excluded." (*People v. Carrillo* (2004) 119 Cal.App.4th 94, 103.)

Beal testified that he locked his truck and found defendant inside of it with a screwdriver. There was little, if any, evidence or argument at trial that Beal acted out of self-defense, whereas there was substantial evidence that he intentionally inflicted significant injuries on defendant because Beal thought defendant was stealing his truck. Contrary to defendant's assertion, admitting the two additional photographs of defendant's injured face likely would have had little, if any, effect on the jury's evaluation of Deputy Allen or Beal's credibility or the overall outcome of defendant's trial.

We therefore conclude the trial court's exclusion of the two photographs of the right side of defendant's face does not constitute prejudicial error because it was not reasonably probable that defendant would have received a more favorable trial outcome if the two photographs in question had been admitted.

In turn, we also we reject defendant's contention that the trial court's exclusion of the two photographs amounted to a violation of his due process rights under California and federal law because any error caused by their exclusion, if any, was harmless. (See *People v. Sanders* (1995) 11 Cal.4th 475, 510 fn. 3 [holding no constitutional violation where evidentiary ruling was harmless].)

V.

THE TRIAL COURT DID NOT ERR BY ADMITTING EVIDENCE OF DEFENDANT'S PRIOR UNCHARGED ACTS OF VEHICLE THEFT

Defendant contends the trial court abused its discretion and denied him his right to due process by admitting evidence about his two prior uncharged vehicle thefts. Defendant argues the trial court should have excluded this evidence because it constituted inadmissible character evidence (Evid. Code, § 1101), and its probative value was substantially outweighed by the potential for undue prejudice (Evid. Code, § 352). The trial court found the evidence was admissible under Evidence Code section 1101, subdivision (b), which provides an exception to the general bar on character evidence that allows the "admission of evidence that a person committed a crime . . . when relevant to prove some fact," such as intent. The trial court concluded the evidence of defendant's prior uncharged vehicle thefts was admissible to prove defendant intended to steal Beal's truck, because those offenses were sufficiently similar to his current offenses. The trial court further found the evidence was more probative than prejudicial, and admitted the evidence. We conclude the trial court did not err by admitting the evidence.

A. *The Prior Offenses*

In 2012 and 2014, defendant was arrested after being found driving a stolen vehicle. At trial, Susan Putt and Riverside County Sheriff's Deputy Robert Beaudet testified that defendant was found driving Putt's stolen car in 2014, about four years before defendant's current offenses. Putt explained that her car had been stolen from a public parking lot in Lake Elsinore at some time between midnight and 2:30 a.m. Deputy Beaudet later pulled defendant over while he was driving Putt's car, and noticed that the driver's side window was broken and that there was glass in the car. After Deputy Beaudet ran the license plate, he learned that the car had been reported stolen.

Riverside County Sheriff's Deputy Daniel Tyler testified that he arrested defendant for driving a stolen car in 2012, about six years before defendant's current offenses. Deputy Tyler testified that he pulled defendant over at a DUI checkpoint in the Lake Elsinore area and asked defendant for his license and registration, but defendant could not provide either. Deputy Tyler asked dispatch to run the registration, and he was told that the car had been reported stolen. During the inspection of the car, Deputy Tyler found "shaved" keys, which he believed were used for breaking into and stealing cars.

B. *Applicable Law*

Evidence Code section 1101, subdivision (a) provides, with a few inapplicable exceptions, that evidence of a person's character or a character trait is inadmissible when offered to prove the person's conduct on a specified occasion. But Evidence Code section 1101, subdivision (b), provides that nothing in Evidence Code section 1101

prohibits the admission of evidence that a person committed a crime "when relevant to prove some fact (such as . . . intent . . .) other than his or her disposition to commit such an act." (Evid. Code, § 1101, subd. (b); see *People v. Catlin* (2001) 26 Cal.4th 81, 111.)

"Evidence of *intent* is admissible to prove that, if the defendant committed the act alleged, he or she did so with the intent that comprises an element of the charged offense. 'In proving intent, the act is conceded or assumed; what is sought is the state of mind that accompanied it.' [Citations.]" (*People v. Ewoldt* (1994) 7 Cal.4th 380, 394, fn. 2 (*Ewoldt*), superseded by statute on other grounds as explained in *People v. Falsetta* (1999) 21 Cal.4th 903, 911-913.) "'The least degree of similarity (between the uncharged act and the charged offense) is required in order to prove intent. [Citation.].'" (*People v. Kelly* (2007) 42 Cal.4th 763, 783 (*Kelly*).)

"'[T]he admissibility of other crimes evidence depends on (1) the materiality of the facts sought to be proved, (2) the tendency of the uncharged crimes to prove those facts, and (3) the existence of any rule or policy requiring exclusion of the evidence.' [Citation.]." (*Kelly*, *supra*, 42 Cal.4th at p. 783.) But because substantial prejudice is inherent in the case of uncharged offenses, evidence of uncharged offenses is admissible only if it has substantial probative value. (*Ibid*.)

Even if evidence of a prior crime is admissible under Evidence Code section 1101, it may be excluded under Evidence Code section 352 if it is unduly prejudicial. Evidence that is unduly prejudicial """uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues."""" (*People v.*

Doolin (2009) 45 Cal.4th 390, 439.) We review trial court rulings made under Evidence Code sections 1101 and 352 for an abuse of discretion. (*People v. Jefferson* (2015) 238 Cal.App.4th 494, 502.)

C. *Analysis*

"In order to be admissible to prove intent, the uncharged misconduct must be sufficiently similar to the charged offense to support the inference that the defendant probably acted with the same intent in each instance." (*People v. Lindberg* (2008) 45 Cal.4th 1, 23.) Defendant argues the trial court abused its discretion in ruling that evidence of his two prior offenses was admissible to show that he intended to steal Beal's truck. We find no abuse of discretion because defendant's uncharged prior offenses were sufficiently similar to the current offenses.

The evidence of defendant's prior offenses was admissible as relevant to showing his intent to steal Beal's truck. "'"[T]he recurrence of a similar result . . . tends (increasingly with each instance) to negative accident or inadvertence or self-defense or good faith or other innocent mental state, and tends to establish . . . the presence of the normal, i.e., criminal, intent accompanying such an act. [Citations.]"'" (*Kelly, supra,* 42 Cal.4th at p 783.) So, "'[w]hen the other crime evidence is admitted solely for its relevance to the defendant's intent, a *distinctive* similarity between the two crimes is often unnecessary for the other crime to be relevant.'" (*People v. Demetrulias* (2006) 39 Cal.4th 1, 16, original italics.)

In order to prove count 1, attempted unlawful taking or driving of a vehicle, the People were required to establish that defendant intended to deprive Beal of title to or possession of his truck. (Veh. Code, § 10851, subd. (a).) In order to prove count 2, vehicle burglary (Pen. Code, § 459), the People were further required to establish that defendant broke into Beal's locked truck with the intent to commit a crime while inside. It is therefore undisputed defendant's intent is at issue.

Defendant, however, argues his prior uncharged offenses and current offenses lack sufficient similarity to support the inference that he had the same intent in each instance. We disagree. Defendant was found driving Putt's car, which was stolen from a public parking lot after its driver's side window was broken at some time between midnight and 2:30a.m. Deputy Tyler testified regarding the other prior offense that defendant was found driving a stolen car with a broken driver's side window and shaved keys inside. Both prior offenses occurred in the Lake Elsinore area. Similarly, in the charged offense, defendant was found in Beal's truck in a public parking lot around midnight in the Lake Elsinore area. Defendant's prior uncharged offenses thus were sufficiently similar to support a reasonable inference that defendant committed the charged offenses. (*Ewoldt, supra,* 7 Cal.4th at p. 404.) The trial court therefore reasonably concluded that the evidence of the two prior offenses was admissible under Evidence Code section 1101, subdivision (b), because it tended to prove that defendant intended to break into and steal Beal's truck. (*Kelly*, *supra,* 42 Cal.4th at p. 783.)

Defendant further argues that the prior offense evidence was inadmissible under Evidence Code section 352 as unduly prejudicial. The trial court found the probative value of the prior offense evidence was not outweighed by any undue prejudice. In deciding whether the prejudicial effect of prior uncharged conduct substantially outweighs its probative value, we look to the following factors: "(1) whether the inference created by the evidence is strong; (2) whether the source of evidence concerning the present offense is independent of and unaffected by information about the uncharged offense; (3) whether the defendant was punished for the prior misconduct; (4) whether the uncharged offense is more inflammatory than the charged offense; and (5) whether the two incidents occurred close in time." (*People v. Sullivan* (2007) 151 Cal.App.4th 524, 559, citing *Ewoldt*, *supra*, 7 Cal.4th at pp. 404-405.)

Applying these factors here, we conclude that the trial court did not abuse its discretion under Evidence Code section 352. Only third factor weighs in defendant's favor, because he was not charged for his prior vehicle theft offenses. (See *Ewoldt*, *supra*, 7 Cal.4th at p. 405 [holding admitting evidence of uncharged crimes is prejudicial because jury might be "inclined to punish the defendant for the uncharged offenses" and may confuse the jury].)

As for the first two factors, the evidence concerning the prior offenses was probative on the issue of whether defendant had the requisite intent, and the sources of the evidence are independent of the information about the two uncharged prior offenses. (See *People v. Sullivan*, *supra*, 151 Cal.App.4th at p. 559 [holding evidence of

defendant's other uncharged offenses was not unduly prejudicial under Evidence Code section 352 because it was not inflammatory and was "quite probative" of his intent].) As for fourth factor, the record shows defendant's uncharged prior vehicle theft offenses were not more inflammatory than his charged offenses because, as outlined above, they were sufficiently similar in that all of them were routine vehicle burglaries in the Lake Elsinore area. (See *Ewoldt, supra*, 7 Cal.4th at p. 405 [testimony about defendant's uncharged prior offenses "no more inflammatory than the testimony concerning the charged offenses"].) Finally, the fifth factor is satisfied because the record also shows the uncharged prior vehicle theft offenses occurred in 2012 and 2014, relatively close in time to defendant's charged offenses, which he committed in 2018. (See *ibid.* [evidence of 12-year-old crime properly admitted].) The evidence of defendant's prior uncharged vehicle thefts therefore was not unduly prejudicial under Evidence Code section 352. (See *Butler v. LeBouef* (2016) 248 Cal.App.4th 198, 207 ["Appellant makes no showing that the prior acts evidence, as a matter of law, was remote in time, or inflammatory, or denied him a fair trial."]; *People v. Doolin, supra*, 45 Cal.4th at p. 439 [evidence is unduly prejudicial only if it evokes bias against the defendant and has minimal effect on the issues].)

Even if the challenged evidence was inadmissible, any resulting error, if any, was harmless. The trial court instructed the jury that it could consider the evidence only for the sole purpose of assessing defendant's intent. We presume the jury followed the trial court's instruction. (*People v. Pride* (1992) 3 Cal.4th 195, 226.) This limiting instruction

sufficiently countered any prejudice resulting from the evidence of defendant's prior uncharged vehicle thefts.

In addition, there was overwhelming evidence that defendant committed the charged offenses. Although defendant's counsel argued that defendant was seeking shelter in Beal's truck, he did not provide any evidence of this beyond evidence that he was homeless at the time of the offense. (See *Du Jardin v. City of Oxnard* (1995) 38 Cal.App.4th 174, 179-180 [noting that an attorney's argument is not evidence].) On the other hand, there was uncontroverted evidence that Beal locked his truck and, when he returned, found defendant inside the truck with a screwdriver. Based on this strong evidence of defendant's guilt, we conclude it is not reasonably probable that defendant would have received a more favorable trial outcome had the evidence of his two prior uncharged vehicle thefts been excluded.

In turn, we reject defendant's contention that allowing evidence of his two prior vehicle theft offenses violated his right to due process because any error caused by its admission, if any, was harmless. (See *People v. Sanders*, *supra*, 11 Cal.4th at p. 510 fn. 3 [holding no constitutional violation where evidentiary ruling was harmless]; *People v. Falsetta*, *supra*, 21 Cal.4th at p. 913 ["The admission of relevant evidence will not offend due process unless the evidence is so prejudicial as to render the defendant's trial fundamentally unfair."].)

VI.

THERE WAS NO CUMULATIVE ERROR

Defendant maintains that, taken together, the trial court's three separate errors constitute cumulative error that warrants reversal. We disagree. "A predicate to a claim of cumulative error is a finding of error." (*People v. Sedillo* (2015) 235 Cal.App.4th 1037, 1068.) Because we do not find any error, we also do not find any cumulative error that warrants reversal. (*Ibid.*; see also *People v. Duff* (2014) 58 Cal.4th 527, 562 ["In the absence of error, there is nothing to cumulate."].)

VII.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

McKINSTER
Acting P. J.

SLOUGH
J.